

Appendix.

CHAPTER 61.

BANK DEPOSITORS' GUARANTY LAW.

Session Laws of 1909.

AN ACT providing for the security of depositors in the incorporated banks of Kansas, creating the bank depositors' guaranty fund of the state of Kansas, and providing regulations therefor, and penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. Any incorporated state bank doing business in this state under the general banking laws of Kansas, having a paid-up and unimpaired surplus fund equal to ten per cent of its capital, and any bank which may after the passage of this act be authorized to do business in this state, and which shall have been actively engaged in the business of banking for at least one year, and having such surplus fund, is hereby authorized and empowered to participate in the assessments and benefits and to be governed by the regulations of the bank depositors' guaranty fund of the state of Kansas hereinafter provided for; provided, that the limitation of one year shall not prevent such participation by a new bank at any time in any city or town in which all banks shall have neglected or failed to become guaranteed banks under the provisions of this act for a period of six months after the taking effect of this act. Before any bank shall become a guaranteed bank within the meaning of this act a resolution of its board of directors, authorized by its stockholders, duly certified by its president and secretary, asking therefor, in form to be provided by the bank commissioner, shall be filed with said bank commissioner, who shall, upon the filing of such resolution, make a rigid examination of the affairs of such bank, and if it is found to be solvent, to be properly managed and conducting its business in strict accordance with the banking law, he shall, after the bank shall have deposited with the state treasurer bonds or money as hereinafter provided, issue to such bank a certificate stating in substance that said bank has complied with the provi-

sions of this act, and that its depositors are guaranteed by the bank depositors' guaranty fund of the state of Kansas, as herein provided.

SEC. 2. Before receiving such certificate from the bank commissioner each bank entitled to the same according to section 1 of this act shall, as an evidence of good faith, deposit, and shall at all times maintain with the state treasurer (subject to the order of the bank commissioner when countersigned by the auditor of state) United States bonds, Kansas state bonds, or the bonds of any county, township, school district, board of education or city within the state of Kansas, to the amount of five hundred dollars for every one hundred thousand dollars or fraction thereof of its average deposits eligible to guaranty (less its capital and surplus) as shown by its last four published statements; provided, that each bank shall so deposit not less than five hundred dollars, and the state treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner. Such bonds only shall be accepted as the school-fund commissioners of the state of Kansas are permitted to buy, and shall bear the certificate of the attorney-general of the state of Kansas stating that in his opinion said bonds have been legally issued. Said bonds, or cash in lieu thereof, shall not be charged out of the assets of the bank, except as hereinafter provided, but shall be carried in its assets under a heading "Guaranty Fund with State Treasurer" until such time as said bank shall default in payment of assessments hereinafter provided for. In lieu of bonds the bank, at its option, may deposit money, which deposits shall be exchangeable for acceptable bonds when the bank elects to make the substitution. In addition to above, each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the bank depositors' guaranty fund with the state treasurer subject to the order of the bank commissioner, and the state treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner; provided, that the minimum assessment to be required from any bank shall be twenty dollars; provided further, that any bank seeking to participate in the assessments and benefits of this act after the first annual assessment for the year 1910 shall have been

made shall be assessed an amount approximately equal to its proportionate share of the money then in the bank depositors' guaranty fund after all losses shall have been deducted, the amount of such assessment to be determined by the bank commissioner. The last above mentioned assessment, however, shall not be required of new banks formed by the reorganization or consolidation of banks which have previously complied with the terms of this act. Upon the deposit and acceptance of such bonds (or money) and the payment of said assessment, then the payment of such deposits of said bank as are specified in this act shall be guaranteed as herein provided, and the bank entitled to its certificate.

SEC. 3. The bank commissioner shall, during the month of January of each year, make assessments of one-twentieth of one per cent of the average guaranteed deposits, less capital and surplus, of each bank (the minimum assessment in any case to be twenty dollars) until the cash fund accumulated and placed to the credit of the bank depositors' guaranty fund shall be approximately five hundred thousand dollars over and above the cash deposited in lieu of bonds, when he shall discontinue such assessments. Should such fund become depleted the bank commissioner shall make such additional assessments from time to time as may become necessary to maintain the same; provided, that not more than five such assessments of one-twentieth of one per cent each shall be made in any one calendar year. The treasurer of the state of Kansas shall hold this fund in the state depository banks as provided by law governing other state funds, subject to the order of the bank commissioner, to be countersigned by the auditor of state, for the payment of depositors of failed guaranteed banks, as hereinafter provided. The state treasurer shall credit this fund quarterly with its proportionate share of interest received from state funds, computed at the minimum rate of interest provided by law, upon the average daily balance of said fund.

SEC. 4. When any bank shall be found to be insolvent by the bank commissioner he shall take charge of such bank, as provided by law, and proceed to wind up its affairs; and he shall, at the earliest moment, issue to each depositor a certificate, upon proof of claim, bearing six per cent interest per annum, upon which dividends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate;

notice of the amount of each dividend to be paid creditors and the date when such payment is to be made shall be published in two consecutive issues of a paper of general circulation in the county or city in which such failed bank is located, and a corresponding notice posted on the door of the receiver's office, and interest shall cease on each dividend on the day named in such notice. The bank commissioner shall likewise publish a notice of the date upon which he will make payments of any balance due on such proof of claim, and interest shall cease on the day so advertised, and said proof of claim shall so state. After the officer in charge of the bank shall have realized upon the assets of such bank and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the depositors, he shall certify all balances due on guaranteed deposits (if any exist) to the bank commissioner, who shall then, upon his approval of such certification, draw checks upon the state treasurer, to be countersigned by the auditor of state, payable out of the bank depositors' guaranty fund, in favor of each depositor for the balance due on such proof of claim as hereinafter provided. If at any time the available funds in the bank depositors' guaranty fund shall not be sufficient to pay all guaranteed deposits of any failed bank, the five assessments herein provided for having been made, the bank commissioner shall pay depositors *pro rata* and the remainder shall be paid when the next assessment is available; provided, however, that whenever the bank commissioner shall have paid any dividend to the depositors of any failed bank out of the bank depositors' guaranty fund, then all claims and rights of action of such depositors so paid shall revert to the bank commissioner for the benefit of said bank depositors' guaranty fund, until said fund shall have been fully reimbursed for payments made on account of such failed bank, with interest thereon at three per cent per annum.

SEC. 5. A penalty of fifty per cent of the amount of said assessment shall be added to the assessment of any bank not remitting as aforesaid within thirty days after receipt of notice of such assessment from the bank commissioner, and if any bank which shall have been assessed and notified as aforesaid shall fail to remit the amount of said assessment as herein provided, a sufficient amount of its bonds (together with the unexpired

coupons) shall be immediately sold by the bank commissioner at public sale and the proceeds used to pay said assessment. Any balance remaining from the proceeds of such sale after the payment of such assessment shall remain to the credit of the bank in the depositors' guaranty fund. The said balance, together with the remainder of the bonds (or cash in lieu thereof) shall be forfeited to the bank depositors' guaranty fund if the bank does not, within sixty days from default in payment of such assessment, remit the full amount of such assessments and penalty to date, and restore the amount of its bonds, or money pledged, as evidence of good faith. Upon the bank's failure to remit its assessments according to the terms of this act the bank commissioner shall immediately examine such bank, and if it is found in his judgment to be insolvent he shall take charge of and liquidate said bank according to law. If said bank be found solvent, the bank commissioner shall cancel its certificate as a guaranteed bank and cause to be displayed in its banking rooms, in a conspicuous place, continuously for six months, a card not smaller than twenty inches by thirty inches and in large, plain type, reading as follows: "This bank has withdrawn from the bank depositors' guaranty fund and the guaranty of its deposits will cease on and after ———." The date on this card shall be a date six months after the first posting of such card. Any bank electing to withdraw from the bank depositors' guaranty fund may do so by giving notice to the bank commissioner and displaying a card as aforesaid, and at the expiration of the six months as aforesaid may receive its bonds (provided always that said bank shall have paid assessments in full to date) when the affairs of all failed banks in liquidation at the expiration of said six months shall have been closed up and the said bank shall have paid its assessments on account of same.

SEC. 6. Deposits which do not bear interest and the following deposits only shall be guaranteed by this act: Time certificates not payable in less than six months from date and not extending for more than one year, bearing interest at not to exceed three per cent per annum and on which interest shall cease at maturity; savings accounts not exceeding in amount one hundred dollars to any one person and not subject to check, upon which the bank has reserved in writing the right to re-

quire sixty days' notice of withdrawal, and bearing interest at not to exceed three per cent per annum. Deposits which are primarily rediscounts or money borrowed by the bank, and all deposits otherwise secured, shall not be guaranteed by this act. Each guaranteed bank shall certify under oath to the bank commissioner at the date of each called statement the amount of money it has on deposit not eligible to guaranty under the provisions of this act, and in assessing such bank this amount shall be deducted from its total deposit. The guaranty as provided for in this act shall not apply to a bank's obligation as indorser upon bills rediscounted, nor to bills payable, nor to moneys borrowed temporarily from its correspondents or others.

SEC. 7. Each bank guaranteed by this act shall keep a correct record of the rate of interest paid or agreed to be paid to each depositor, and shall make a statement thereof under oath to the bank commissioner quarterly. If a bank displays a card or in any manner advertises that its depositors are guaranteed, such bank, if it pays or agrees to pay, either directly or indirectly, interest at any rate greater than three per cent per annum upon deposits of any kind, class or character, shall state upon or in the same card or advertisement that no deposits are guaranteed which bear a greater rate of interest per annum than three per cent; and this portion of the advertisement must be in type of the same size as that used in stating that the deposits in the bank are guaranteed. No bank which pays interest at a rate greater than three per cent per annum on any form of deposit, or pays any interest on savings deposits withdrawn before July 1 or January 1 next following the date of the deposit, or on any time certificate cashed before maturity, shall be permitted to participate in the benefits of this act; provided, however, that any existing contracts for higher rates of interest entered into before the passage of this act may be carried out unimpaired, and such existing contracts shall not disqualify a bank to participate in the benefits of this act. Any managing officer of any bank guaranteed under this act, or any person acting in its behalf or for its benefit, who shall hereafter pay or promise to pay any depositor, either directly or indirectly, any rate of interest in excess of or in addition to the maximum rate of interest permitted by this act, or who shall, with intent to evade any of the provisions of this act, pledge the time cer-

tificate or other obligation of such bank as security for the personal obligation of himself or any other person, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment. The display of any card or other advertisement tending to convey the impression that the deposits of the bank are guaranteed by the state of Kansas, either directly or indirectly, shall be a misdemeanor and shall subject the offender to a fine of five hundred dollars, and any bank displaying a card or advertisement to the effect that its deposits are guaranteed by the bank depositors' guaranty fund of the state of Kansas when not authorized so to do under the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars.

SEC. 8. Any trust company heretofore organized under the laws of this state, and now in operation, may reorganize as a state bank under the laws of this state by filing with the secretary of state an amended charter signifying such purpose, to be approved by the Charter Board; and any private bank or national bank having the required capital and being otherwise qualified, may reorganize as a state bank; or any newly organized bank taking over the business of another bank, otherwise qualified, may immediately become a guaranteed bank by depositing bonds or money and paying its assessments and otherwise complying with the provisions of this act.

SEC. 9. A solvent bank, upon retiring from business and liquidating its affairs, shall be entitled to receive back from the state treasurer, after all the depositors in such bank have been paid in full, its bonds or money pledged, but not any part of any unused assessment that may be in the bank depositors' guaranty fund; provided, however, that should such bank be turning over its business to another bank it shall not receive back its bonds, or money deposited in lieu thereof, until the bank receiving its business shall have deposited with the state treasurer bonds, or money in lieu thereof, according to the requirements of this act.

SEC. 10. Banks may be permitted, in the discretion of the bank commissioner, to exchange their bonds for others acceptable under this act, or be allowed to de-

posit in lieu thereof an equal amount in cash, which may in turn be withdrawn upon the substitution of bonds acceptable under this act.

SEC. 11. If at any regular or special examination of a guaranteed bank it shall be found to be violating any of the provisions of this act, the bank commissioner shall notify the bank, and the bank may be given thirty days in which to comply with the provisions of this act; and if at the expiration of this time such provisions have not been complied with the bank commissioner shall cancel its certificate of membership in the bank depositors' guaranty fund as herein provided and forfeit its bonds deposited with the state treasurer for the benefit of the bank depositors' guaranty fund.

SEC. 12. All bonds, and moneys deposited in lieu of bonds, placed in the state treasury under this act shall be kept in said treasury separate from all other bonds and moneys and to the credit of the bond account of the bank depositors' guaranty fund, and shall be used for no other purpose. The state treasurer shall cause the coupons upon the said bonds to be cut thirty days before maturity and sent or delivered to the bank which deposited them; provided always, that said bank shall have paid all assessments in full to date.

SEC. 13. After the passage of this act any national bank doing business in the state of Kansas, under the laws of the United States, after an examination at its expense by the state bank commissioner, and upon his approval as to its financial condition, may at its option participate in the assessments and benefits of the bank depositors' guaranty fund of the state of Kansas upon the same terms and conditions as apply to state banks; provided, that such national banks shall forward to the bank commissioner of the state of Kansas detailed reports, in form to be provided by him, of its condition on the dates of the usual called statements of state banks (such reports not to be published except at the option of the bank), and shall submit to one examination each year by his department (or oftener in his discretion) as provided by the banking laws of the state of Kansas, and pay the usual fees therefor. Should a national bank disregard or refuse to comply with any recommendation made by the bank commissioner, in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be canceled.

SEC. 14. It shall be unlawful for any bank guaranteed under the provisions of this act to receive deposits continuously for six months in excess of ten times its paid-up capital and surplus, and the violation of this section by any bank shall cancel its rights to participate in the benefits of the bank depositors' guaranty fund, and work a forfeiture of its bonds deposited with the state treasurer for the benefit of such fund.

SEC. 15. For the purpose of carrying into effect the provisions of this act the bank commissioner shall provide forms and make requisition on the state printer for the necessary blanks, and all reports received by the bank commissioner shall be preserved by him in his office. The state treasurer is authorized to provide forms and make requisition on the state printer for the necessary blanks and record-books for his office.

SEC. 16. All acts and parts of acts in conflict with this act are hereby repealed in so far as they so conflict, but no provision of any banking law or other statute of this state shall be construed to be amended, modified or repealed, except in so far as necessary to permit the unrestricted operation of this act as applied to banks participating in the privileges of this act.

SEC. 17. This act shall take effect and be in force from and after June 30, 1909, and its publication in the official state paper.

Approved March 6, 1909.

Section 32, chapter 11a, Compiled Laws of 1901, being section 438, Compiled Laws of 1901:

"[438] *Declare dividends.* SEC. 32. The directors or owners of any bank doing business under this act may declare dividends of so much of the net profits of their bank as they shall judge expedient; but each bank shall, before the declaration of a dividend, carry one-tenth part of its net profits since the last preceding dividend to its surplus fund, until the same shall amount to fifty per cent of its capital stock."

Section 446, Compiled Laws of 1901:

"[446] *Collateral security.* SEC. 40. No bank, banker or bank officer shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security, except bonds of the United States, of the state of Kansas, or of some county, school district or municipality of the state of Kansas may be

deposited with the state treasurer as security for the deposit of state money; provided, that any bank may borrow money for temporary purposes not to exceed in amount fifty per cent of its paid-up capital, and may pledge assets of the bank not exceeding twenty per cent in excess of the amount borrowed as collateral security therefor; provided further, that whenever it shall appear that a bank is borrowing habitually for the purpose of reloaning, the bank commissioner may require such bank to pay off such borrowed money. Nothing herein shall prevent any bank from rediscounting in good faith and indorsing any of its negotiable notes. It shall be unlawful for any bank to issue its certificate of deposit for the purpose of borrowing money." (General Statutes of 1901, as amended by chapter 69, Session Laws of 1905.)

Section 461, General Statutes of 1901:

"[461] *Institute proceedings.* SEC. 55. If, after the expiration of one year from the closing of any incorporated bank, it shall appear to the receiver thereof that the assets of such bank are insufficient to pay its liabilities, it shall be the duty of such receiver to immediately institute proper proceedings, in the name of the bank, for the collection of the liability of the stockholders of such bank; all sums so collected to become a part of the assets of such bank and to be distributed *pro rata* to the creditors thereof, in the same manner as other funds. No action by any creditor against any stockholder of such bank for the recovery of such liability shall be maintained unless it shall appear to the satisfaction of the court that the receiver has failed to commence action as herein provided." (General Statutes of Kansas, 1901.)

Section 7, chapter 59, Laws of 1909:

"SEC. 7. That section 461 of the General Statutes of Kansas of 1901 be and is hereby amended to read as follows: Sec. 461. At any time after the closing of any incorporated bank it shall appear to the receiver thereof that the assets of such bank are insufficient to pay its liabilities, it shall be the duty of such receiver to immediately institute proper proceedings, in the name of the bank, for the collection of the liability of the stockholders of such bank; all sums so collected to become a part of the assets of such bank and to be distributed *pro rata* to the creditors thereof in the same

manner as other funds; provided, that all transfers of property by a stockholder after the closing of any such bank and before the payment of the double liability as provided by this act, shall be absolutely void as against said double liability. No action by any creditor against any stockholder of such bank for the recovery of such liability shall be maintained unless it shall appear to the satisfaction of the court that the receiver has failed to commence action as herein provided."

Sections 1 and 2, article 12, constitution of Kansas:

"§ 210. *Corporate powers.* § 1. The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

"§ 211. *Dues from corporations.* § 2. Dues from corporations shall be secured by the individual liability of the stockholders to the amount of stock owned by each stockholder, and such other means as shall be provided by law; but such individual liability shall not apply to railroad corporations, nor corporations for religious or charitable purposes."